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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,432	08/07/2003	Luc Uylenbroeck	2003_1110	8533
513	7590	03/17/2005	EXAMINER	
WENDEROTH, LIND & PONACK, L.L.P.			SPIVACK, PHYLLIS G	
2033 K STREET N. W.			ART UNIT	
SUITE 800			PAPER NUMBER	
WASHINGTON, DC 20006-1021			1614	

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/635,432

Applicant(s)

UYLENBROECK ET AL.

Examiner

Phyllis G. Spivack

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-20, 22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-20, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The indication of finality set forth in the last Office Action is withdrawn.

New claims 22 and 23 are presented. Claim 21 is canceled. Accordingly, claims 12-20, 22 and 23 are pending.

Claims 1-11 were originally rejected under 35 U.S.C. 102(b) as being anticipated by Trieloff, I., TW Padiatrie (abstract). It was asserted Trieloff teaches the administration of cetirizine to prevent asthma. The rejection was maintained in the last Office Action.

Applicants have presently provided English translations for Trieloff, as well as two other references, Businco and Fortschritte der Medizin that were cited in the last Office Action.

In response to the rejection of record, Applicants argue there are no results to the disclosed ETAC study, there is no enablement and there is no reasonable expectation of success.

To the extent that Trieloff appears to be hypothetical, the rejection of record under

35 U.S.C. 102(b) is withdrawn.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 12-20, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trieloff, I., TW Padiatrie.

Trieloff teaches preventive therapy with cetirizine for children aged 1-2 years wherein the onset of asthma has not occurred and wherein a parent or sibling has atopic dermatitis. Optimal dosages for children, as well as the commercial product as the dichloride salt of cetirizine, are known in the prior art. Although there is no disclosed outcome of the study, its intent to reduce the incidence of infantile asthma in a defined, high-risk patient population is clear. One skilled in the art, in view of Trieloff's teaching, would have been motivated to administer cetirizine to inhibit the onset of asthma in high-risk small children. The prior art suggests a preventative therapy with a reasonable expectation of success. The actual determination of optimal dosages is a parameter well within the purview of those skilled in the art through no more than routine experimentation.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Phyllis G. Spivack whose telephone number is 571-272-0585. The Examiner can normally be reached Mondays to Fridays from 10:30 AM to 7 PM.

If attempts to reach the Examiner by telephone are unsuccessful after one business day, the Examiner's supervisor, Chris Low, can be reached at telephone

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number 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phyllis G. Spivack  
Primary Examiner  
Art Unit 1614

**PHYLLIS SPIVACK**  
**PRIMARY EXAMINER**

March 13, 2005